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9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF LOS ANGELES  
12

13 **STATE OF CALIFORNIA DEPARTMENT OF**  
14 **TOXIC SUBSTANCES CONTROL,**

15 Plaintiff,

16 v.  
17

18 **J & S METALS, a California corporation;**  
19 **KENNETH Y. MADICK, an individual; EDDIE A.**  
20 **MADICK, an individual; IDA L. MADICK, an**  
21 **individual; LODI INVESTMENT COMPANY, a**  
**business organization form unknown; O.K.I. LLC, a**  
**California corporation; and DOES 1-20,**

22 Defendants.  
23  
24  
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26  
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No. BC 296072

**STIPULATION FOR  
SETTLEMENT**

1 Plaintiff, the State of California Department of Toxic Substances Control ("Department"), and  
2 Defendants J&S Metals, Inc., Kenneth Y. Madick, Eddie A. Madick, Ida L. Madick, Lodi Investment  
3 Company, and O.K.I. LLC (collectively referred to as "Defendants") enter into this Stipulation for  
4 Settlement of the above-captioned action ("Stipulation") and stipulate as follows:

## 5 **I. INTRODUCTION.**

6 1. On or about May 21, 2003, the Department filed a complaint seeking civil penalties and  
7 injunctive relief against the Defendants for violations of the California Hazardous Waste Control Law,  
8 Health and Safety Code section 25100 et seq. ("HWCL"), and hazardous waste regulations in Title 22 of  
9 the California Code of Regulations, section 66001 et seq., occurring on the property located at 9401-  
10 9405 S. Alameda, 9313-9323 S. Laurel, and 9413-9417 S. Laurel, in Los Angeles, California ("Site").  
11 On August, 27, 2003, the Department filed and served an Amended Complaint alleging additional  
12 violations of hazardous waste laws and regulations ("Amended Complaint"). A copy of the Amended  
13 Complaint is attached as Attachment 1 to this Stipulation.

14 2. On or about September 29, 2003, the Defendants filed and served an Answer to the  
15 Amended Complaint.

16 3. The parties have engaged in settlement discussions in an attempt to resolve this action.  
17 The Department and the Defendants enter into this Stipulation for the purpose of avoiding prolonged and  
18 complicated litigation and furthering the public interest.

## 19 **II. SETTLEMENT**

20 4. Matters Addressed. This Stipulation shall resolve the Defendants' liability for the  
21 violations of the HWCL and hazardous waste regulations alleged in the Amended Complaint. This  
22 Stipulation shall obligate the Defendants to pay civil penalties and oversight costs, and undertake certain  
23 corrective action to address the hazardous waste violations alleged in the Amended Complaint.

24 5. Jurisdiction. The Department and the Defendants agree that this Court has subject matter  
25 jurisdiction over the matters alleged in the Amended Complaint and personal jurisdiction over the  
26 Defendants.

27 6. Waiver of Hearing. The Defendants waive their right to a hearing and/or trial on the  
28 violations alleged in the Amended Complaint.

1           7. Admissions. Defendants Kenneth Y. Madick and J&S Metals, Inc. (hereinafter referred  
2 to as "J&S Defendants") admit the violations alleged in the Amended Complaint. Defendants Eddie A.  
3 Madick, Ida L. Madick, Lodi Investment Company, and O.K.I. LLC (hereinafter referred to collectively  
4 as "Owner Defendants") do not admit the violations alleged in the Amended Complaint.

5           8. Retention of Jurisdiction. Pursuant to Code of Civil Procedure section 664.6, the parties  
6 jointly request that the Court retain jurisdiction of this matter and over the parties to enforce this  
7 Stipulation until performance in full of the terms of this Stipulation.

8           9. Entry of Judgment. Pursuant to Code of Civil Procedure section 664.6, a final Judgment  
9 Pursuant to Stipulation against the J&S Defendants in the form attached as Attachment 2 to this  
10 Stipulation may be filed and entered by the Court on a party's motion or on the Court's own motion  
11 without further notice to any party and without any further proceedings. In the event that the Owner  
12 Defendants fail to comply with the terms of this Stipulation, a final Judgment Pursuant to Stipulation  
13 against the Owner Defendants in the form attached as Attachment 3 to this Stipulation may be filed and  
14 entered by the Court on a party's motion or on the Court's own motion with notice to the Owner  
15 Defendants.

16           10. Dismissal of Action. In the event that the Court grants the parties' request for retention  
17 of jurisdiction pursuant to paragraph 8 of this Stipulation, Plaintiff shall file a request for dismissal of  
18 the Owner Defendants from this action, no later than forty-five (45) days after entry of the Court's order  
19 retaining jurisdiction of this action to enforce this Stipulation. In the event that the Court denies the  
20 parties' request for retention of jurisdiction, Plaintiff shall file a request for dismissal of the Owner  
21 Defendants from this action, no later than forty-five (45) days after the satisfactory completion by the  
22 Owner Defendants of the terms of this Stipulation.

### 23                           **III. COMPLIANCE AND CORRECTIVE ACTION**

24           11. Compliance with HWCL. The Defendants agree to correct the violations alleged in the  
25 Amended Complaint and the Summaries of Violations issued by the Department on August 28, 2003,  
26 and April 5, 2004 ("SOVs"). Copies of the SOVs are attached as Attachment 4 to this Stipulation.

27           12. Interim Corrective Action Measures. The Defendants shall immediately take interim  
28 measures to limit exposure to the hazardous waste on the Site, including measures:

1 a. to prevent public access to the Site, such as locking gates and providing site security  
2 in accordance with sections 66265.14 and 66265.31 of Title 22, California Code of Regulations;

3 b. to cover the waste piles and other open containers, bins and/or boxes of hazardous  
4 waste at the Site in accordance with sections 66262.34, 66265.31 and 66265.251 of Title 22, California  
5 Code of Regulations;

6 c. to control rainwater run-on and stormwater runoff at the Site in accordance with  
7 sections 66265.31 and 66265.253 of Title 22, California Code of Regulations; and

8 d. to place hazardous waste warning signs at each entrance to the Site and at other  
9 locations in accordance with section 66265.14 (c) of Title 22, California Code of Regulations.

10 13. The Defendants shall cover any piles of hazardous waste on the Site with a tarp, and  
11 secure the tarp with a device to prevent the hazardous waste piles from becoming uncovered at any time.  
12 The covers shall be maintained at all times by the Defendants to prevent any release of hazardous waste  
13 or hazardous waste constituents into the environment through wind dispersion or other means.

14 14. The Defendants shall place around the perimeter of each pile of hazardous waste a berm  
15 to prevent water runoff from the hazardous waste piles at the Site.

16 15. The Defendants shall perform other measures as necessary to contain present  
17 contamination and to prevent any future contamination at the Site.

18 16. The Defendants shall not accept at the Site any hazardous waste from off-site.

19 17. No hazardous or non-hazardous waste and/or any other items shall be added to the  
20 existing piles of hazardous waste on the Site.

21 18. The Interim Measures implemented at the Site shall be designed to mitigate current or  
22 potential threats to human health and/or the environment, and should, to the extent practicable, be  
23 consistent with the objectives of, and contribute to the performance of, any remedy which may be  
24 required at the Site.

25 19. Removal Action. Within 30 days of the effective date of this Stipulation, the  
26 Defendants shall submit to the Department for review and approval an adequate Removal Action  
27 Workplan ("Workplan") for the Site, and a Schedule for the implementation of the Removal Action

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1 Workplan in accordance with the Scope of Removal Action Workplan attached as Attachment 5 to this  
2 Stipulation.

3 20. Concurrent with the submission of a Removal Action Workplan, the Defendants shall  
4 submit to the Department a Health and Safety Plan in accordance with the Scope of Work for a Health  
5 and Safety Plan attached as Attachment 6 to this Stipulation.

6 21. The Defendants shall implement an approved Removal Action Workplan for the Site  
7 approved by the Department in accordance with the schedule and provisions contained therein.

8 22. The Defendants agree to conduct the removal of the hazardous wastes on the Site in  
9 compliance with applicable hazardous waste laws and regulations.

10 23. The Defendants shall complete the removal action at the Site within six months from the  
11 Effective Date of the Stipulation.

12 24. In the event that the Defendants request an extension of the deadline for completion of  
13 the removal action in paragraph 23 of this Stipulation, the Department shall grant a thirty (30) day  
14 extension of the deadline for completion of the removal action if: a) the Defendants submitted a  
15 Removal Action Workplan in accordance with paragraph 19 of this Stipulation; and b) the Defendants  
16 are not responsible for the delay in completion of the removal action.

17 25. Department Approval. The Defendants shall revise any work plan, report,  
18 specification, or schedule in accordance with the Department's written comments. The Defendants shall  
19 submit to the Department any revised documents by the due date specified by the Department. Revised  
20 submittals are subject to the Department's approval or disapproval. No informal advice, guidance,  
21 suggestions or comments by the Department regarding reports, plans, specifications, schedules, or any  
22 other writings by the Defendants shall be construed to relieve the Defendants of the obligation to obtain  
23 such formal approvals as may be required by this Stipulation.

24 26. Certification of Compliance. Within ten (10) days after the Defendants have complied  
25 with all of the requirements in Section III (Compliance and Corrective Active Action), with the  
26 exception of this paragraph, the Defendants shall submit to the Department a certification of compliance  
27 stating that the Defendants have complied with their obligations under Section III, and providing  
28 documentation of such compliance.

1 **IV. OVERSIGHT COSTS**

2 27. The Defendants agree to pay the Department's costs of overseeing the investigation,  
3 corrective action, and removal actions at the Site pursuant to this Stipulation.

4 28. The Department will provide the Defendants with a billing statement at least quarterly,  
5 which will include the name(s) of the employee(s), identification of the activities, the amount of time  
6 spent on each activity, and the hourly rate charged.

7 29. The Defendants shall make payments for the Department's oversight costs within sixty  
8 (60) days of the date of the billing statement by check payable to the Department of Toxic Substances  
9 Control and in accordance with paragraph 38 of this Stipulation. If the Defendants do not pay an invoice  
10 within sixty (60) days of the date of the billing statement, the amount is subject to interest as provided by  
11 Health and Safety Code section 25360.1.

12 30. The Department will retain all costs records associated with the work performed under  
13 this Stipulation as required by state law. The Department will make documents that support the  
14 Department's cost determination available for inspection upon request, as provided by the Public  
15 Records Act.

16 31. Any dispute concerning the Department's costs incurred pursuant to this Stipulation is  
17 subject to the Dispute Resolution provision of this Stipulation and the dispute resolution procedures as  
18 established pursuant to Health and Safety Code section 25269.2. The Department reserves its right to  
19 recover unpaid costs under applicable state and federal laws.

20 **V. RESTRICTIONS ON HAZARDOUS WASTE OPERATIONS**

21 32. The Defendants agree that neither they, nor any entity in which any of the Defendants,  
22 individually or jointly, have a 5% or greater ownership interest, will engage in the business of storing,  
23 treating, transporting or disposing of hazardous waste in California for five (5) years.

24 33. The Defendants agree that the Site will not be used in any manner that requires  
25 authorization from the Department, including storing, treating, transporting or disposing of hazardous  
26 waste.

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1 **VI. PENALTIES.**

2 34. The Owner Defendants are liable to the Department for civil penalties for the violations  
3 alleged in the Complaint in the amount of \$50,000. The Owner Defendants shall pay these civil  
4 penalties in monthly installment payments, with the initial payment due within thirty (30) days of the  
5 Effective Date of the Stipulation, as follows: a) six monthly payments of at least \$1,500; and b) eighteen  
6 monthly payments of at least \$2,277.78. The entire amount of civil penalties owed by the Owner  
7 Defendants shall be paid within two (2) years of the Effective Date of the Stipulation.

8 35. Defendant Kenneth Madick is liable to the Department for civil penalties for the  
9 violations alleged in the Complaint in the amount of \$50,000. Defendant Kenneth Madick shall pay  
10 these civil penalties in monthly installment payments of at least \$2,083.34, with the initial payment due  
11 within thirty (30) days of the Effective Date of the Stipulation. The entire amount of civil penalties  
12 owed by Defendant Kenneth Madick shall be paid within two (2) years of the Effective Date of the  
13 Stipulation.

14 36. Defendant J&S Metals is liable to the Department for civil penalties for violations  
15 alleged in the Complaint in the amount of \$175,000.

16 37. All payments required pursuant to this Stipulation shall be made by certified or cashier's  
17 check, payable to the Department of Toxic Substances Control and shall state the case "DTSC v. J&S  
18 Metals, Case No. BC 296072."

19 38. All payments shall be sent to:

20 Department of Toxic Substances Control  
21 Accounting Office  
22 1001 I Street  
23 P.O. Box 806  
24 Sacramento, CA 95812-0806

25 39. A copy of all payments shall be simultaneously sent to:

26 Phil Blum, Unit Chief  
27 Task Force Support and Special Investigations Branch  
28 Department of Toxic Substances Control  
1011 N. Grandview Avenue  
Glendale, CA 91201

40. Failure to Comply with Stipulation.

a. In the event that the Owner Defendants fail to comply with their obligations under the Stipulation, the Owner Defendants shall be liable for \$100,000 in civil penalties which shall be immediately due and payable.

b. In the event that Defendant Kenneth Madick fails to comply with his obligations under the Stipulation, Defendant Kenneth Madick shall be liable for \$100,000 in civil penalties which shall be immediately due and payable.

## VII. DISPUTE RESOLUTION

41. The parties agree to use their best efforts to resolve all disputes informally. The parties agree that the procedures contained in this section are the sole administrative procedures for resolving disputes arising under this Stipulation. If the Defendants fail to follow the procedures contained in this section, they shall have waived their right to further consideration of the disputed issue.

42. If the Defendants disagree with any written decision by the Department pursuant to this Order, the Defendants may submit a written objection to the Department. The written objection must be mailed to the Department within fourteen (14) days of the Defendants' receipt of the Department's written decision. The Defendants' written objection must set forth the specific points of the dispute and the basis for the Defendants' position.

43. The Department and the Defendants shall have fourteen (14) days from the Department's receipt of the Defendants' written objection to resolve the dispute through formal discussions. This period may be extended by the Department for good cause. During such period, the Defendants may meet or confer with the Department to discuss the dispute.

44. After the formal discussion period, the Department will provide the Defendants with its written decision on the dispute. The Department's written decision will reflect any agreements reached during the formal discussion period and be signed by the Department's Branch Chief or his/her designee.

45. The existence of a dispute shall not excuse, toll, or suspend any other compliance obligation or deadline required pursuant to this Stipulation.

46. Nothing in this Stipulation waives the Defendants' right to seek judicial review of the Department's written decisions pursuant to this Section.

1 **VIII. OTHER SETTLEMENT TERMS**

2 47. Notice. Unless otherwise specified in this Stipulation, all submissions and notices  
3 required by this Stipulation shall be sent as follows:

4 For the Department:

5 Phil Blum, Unit Chief  
6 Task Force Support and Special Investigations Branch  
7 Department of Toxic Substances Control  
8 1011 N. Grandview Avenue  
9 Glendale, CA 91201

10 Nirupma Suryavanshi  
11 Tiered Permitting Corrective Action Branch  
12 Department of Toxic Substances Control  
13 5796 Corporate Ave.  
14 Cypress, CA 90630

15 For the Defendants:

16 Eddie and Lee Madick  
17 35934 Calloway Lane  
18 Palm Desert, CA 92211

19 Kenneth Madick  
20 5188 Brian Lane  
21 Encino, CA 91436

22 Robert L. Glushon, Esq.  
23 Luna & Glushon  
24 15821 Ventura Boulevard, Suite 600  
25 Encino, CA 91436

26 48. Quality Assurance. All sampling and analyses performed by the Defendants under this  
27 Stipulation shall follow applicable Department and USEPA guidance for sampling and analysis. Work  
28 plans shall contain quality assurance/quality control and chain of custody procedures for all sampling,  
monitoring, and analytical activities. Any deviations from the approved work plans must be approved by  
the Department prior to implementation, must be documented, including reasons for the deviations, and  
must be reported in the applicable report.

49. Sampling and Data/Document Availability. The Defendants shall submit to the  
Department upon request the results of all sampling and/or tests or other data generated by its  
employees, agents, consultants, or contractors pursuant to this Stipulation.

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1           50. At the request of Department, the Defendants shall provide or allow the Department or  
2 its authorized representative to take split or duplicate samples of all samples collected by the Defendants  
3 pursuant to this Stipulation. Similarly, at the request of the Defendants, the Department shall allow  
4 Respondent or its authorized representative to take split or duplicate samples of all samples collected by  
5 the Department under this Order.

6           51. Access. The Defendants agree to provide access to the Site at all reasonable times to  
7 employees, contractors, and consultants of the Department for purposes of implementing this  
8 Stipulation. The Department and its authorized representatives may enter and move freely about the Site  
9 at all reasonable times for purposes including but not limited to (1) inspecting records, operating logs  
10 and contracts relating to the Site, (2) reviewing the progress of Defendants in carrying out the terms of  
11 this Stipulation, and (3) conducting such tests as the Department may deem necessary. The Defendants  
12 shall permit such persons to inspect and copy all records, documents, and other writings, including all  
13 sampling, testing, monitoring and other data generated by the Defendants or on their behalf, in any way  
14 pertaining to work undertaken pursuant to this Stipulation.

15           52. Record Preservation. The Defendants shall retain, during the pendency of this  
16 Stipulation and for a minimum of six years after its termination, all data, records, and documents that  
17 relate in any way to the performance of this Stipulation or to hazardous waste management and/or  
18 disposal at the Site. The Defendants shall notify the Department in writing 90 days prior to the  
19 destruction of any such records, and shall provide Department with the opportunity to take possession of  
20 any such records.

21           53. Reservation of Rights. Except as expressly provided in paragraph 4 of this Stipulation,  
22 nothing in this Stipulation shall constitute or be construed as satisfaction or release from liability for any  
23 conditions or claims arising as a result of past, current or future acts or operations of any of the  
24 Defendants.

25           54. Except as expressly provided in paragraph 4 of this Stipulation, nothing in this  
26 Stipulation shall limit the Department from taking enforcement actions against the Defendants for  
27 violations of the HWCL or other state or federal laws. The Department reserves its right and authority  
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1 under any applicable state or federal law or regulation to undertake response actions at the Site, and its  
2 right to seek reimbursement from the Defendants for costs incurred with respect to such actions.

3 55. The Department reserves all of its statutory and regulatory powers, authorities, rights and  
4 remedies which may pertain to The Defendants' failure to comply with the requirements of this  
5 Stipulation.

6 56. Nothing in this Stipulation is intended nor shall it be construed to preclude any other  
7 State agency, department, board, or entity from taking appropriate enforcement actions or otherwise  
8 exercising its authority under any law, statute or regulation.

9 57. Requirements of the HWCL. The duties imposed on the Defendants by this Stipulation  
10 shall be construed to be requirements of the Department issued pursuant to the HWCL. Any violation of  
11 this Stipulation is separate and in addition to any violations of any provision of HWCL, and may subject  
12 the Defendants to penalties and any other remedies provided by the provisions of the HWCL and other  
13 applicable provisions of law.

14 58. Compliance with Applicable Laws. The Defendants shall carry out the obligations  
15 under this Stipulation in compliance with all local, State, and federal requirements, including but not  
16 limited to requirements to obtain permits and to assure worker safety.

17 59. Endangerment During Implementation. In the event that the Department determines that  
18 any circumstances or activities (whether or not pursued in compliance with this Stipulation) are creating  
19 an imminent or substantial endangerment to the health or welfare of people on the Site or in the  
20 surrounding area or to the environment, the Department may order the Defendants to stop further  
21 implementation for such period of time as needed to abate the endangerment. Any deadline in this  
22 Stipulation directly affected by a Stop Work Order under this section shall be extended for the term of  
23 such Stop Work Order.

24 60. Government Liabilities. The State of California shall not be liable for any injury or  
25 damage to persons or property resulting from acts or omissions by the Defendants, or their directors,  
26 officers, employees, agents, representatives or contractors in carrying out activities pursuant to this  
27 Stipulation, nor shall the State of California be held as a party to or guarantor of any contract entered  
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1 into by the Defendants, their directors, officers, employees, agents, representatives or contractors in  
2 carrying out activities required pursuant to this Stipulation.

3 61. Incorporation of Plans and Reports. All plans, schedules, and reports that require  
4 Department approval and are submitted by Respondent pursuant to this Stipulation are incorporated  
5 herein upon approval by the Department.

6 62. Extension Request. If the Defendants are unable to perform any activity or submit any  
7 document within the time required under this Stipulation, the Defendants may, prior to expiration of the  
8 time, request an extension of time in writing. The extension request shall include a justification for  
9 delay. The Department shall have sole discretion to determine whether or not to grant any extension  
10 requests.

11 63. Parties Bound. This Stipulation shall apply to and be binding upon the Defendants, and  
12 their officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and  
13 assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and  
14 upon the Department and any successor agency of the State of California that may have responsibility for  
15 and jurisdiction over the subject matter of this Stipulation.

16 64. Signatories. Each signatory to this Stipulation certifies that he or she is fully authorized  
17 by the party he or she represents to enter into this Stipulation, to execute it on behalf of the party  
18 represented, and to legally bind that party.

19 65. Integration. This Stipulation constitutes the entire agreement between the parties  
20 regarding the matters covered herein. This Stipulation and all of its provisions shall be deemed to have  
21 been drafted equally by all parties hereto.

22 66. Counterparts. This Stipulation may be executed in counterparts, and such counterparts  
23 together constitute the original document.

24 67. Modification. This Stipulation may not be amended or supplemented, except upon  
25 written approval of all of the parties hereto.

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68. Effective Date. The effective date of this Stipulation is the date the Stipulation is executed by the Department.

**IT IS SO STIPULATED.**

**PLAINTIFF:**

DEPARTMENT OF TOXIC SUBSTANCES  
CONTROL

Dated: 9/13/04

By: Stephen C. Sterling  
Stephen Sterling, Chief  
Task Force Support &  
Special Investigations Branch

**DEFENDANTS:**

EDDIE A. MADICK

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
EDDIE A. MADICK

IDA LEE MADICK

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
IDA LEE MADICK

O.K.I. LLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
EDDIE A. MADICK

LODI INVESTMENT COMPANY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
EDDIE A. MADICK

68. Effective Date. The effective date of this Stipulation is the date the Stipulation is executed by the Department.

**IT IS SO STIPULATED.**

**PLAINTIFF:**

DEPARTMENT OF TOXIC SUBSTANCES  
CONTROL

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Stephen Sterling, Chief  
Task Force Support &  
Special Investigations Branch

**DEFENDANTS:**

EDDIE A. MADICK

Dated: 9/6/04

By: Eddie Madick  
EDDIE A. MADICK

IDA LEE MADICK

Dated: 9/6/04

By: Ida Lee Madick  
IDA LEE MADICK

O.K.I. LLC

Dated: 9/6/04

By: Eddie Madick  
EDDIE A. MADICK

LODI INVESTMENT COMPANY

Dated: 9/6/04

By: Eddie Madick  
EDDIE A. MADICK

J&S METALS, INC.

Dated:

9/6/09

By:

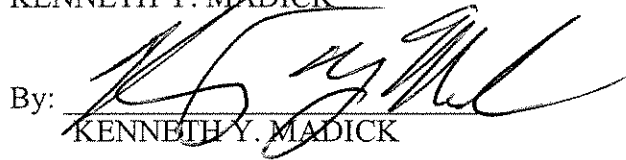
  
KENNETH Y. MADICK, President

KENNETH Y. MADICK

Dated:

9/6/09

By:

  
KENNETH Y. MADICK

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